

IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF THE INSOLVENCY ACT 1986

Cases No:

IN THE MATTER OF SCL GROUP LTD  
COMPANY NUMBER 05514098  
IN THE MATTER OF SCL ANALYTICS LTD  
COMPANY NUMBER 09838667  
IN THE MATTER OF SCL COMMERCIAL LTD  
COMPANY NUMBER 08840965  
IN THE MATTER OF SCL SOCIAL LTD  
COMPANY NUMBER 08410560  
IN THE MATTER OF SCL ELECTIONS LTD  
COMPANY NUMBER 08256225  
IN THE MATTER OF CAMBRIDGE ANALYTICA (UK) LIMITED  
COMPANY NUMBER 09375920  
IN THE MATTER OF CAMBRIDGE ANALYTICA LLC  
(A COMPANY REGISTERED IN DELAWARE)  
IN THE MATTER OF SCL USA INC.  
(A COMPANY REGISTERED IN DELAWARE)

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**SKELETON ARGUMENT FILED ON BEHALF OF THE PROPOSED ADMINISTRATOR**  
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SOLICITORS FOR THE PROPOSED ADMINISTRATOR

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*Effective*

*Likely to be unopposed*

*Time estimate*

- *45 minutes court time (together)*
- *40 minutes reading (together).*

*The Court is invited to pre-read (to the extent time permits):-*

- *Administration Applications*

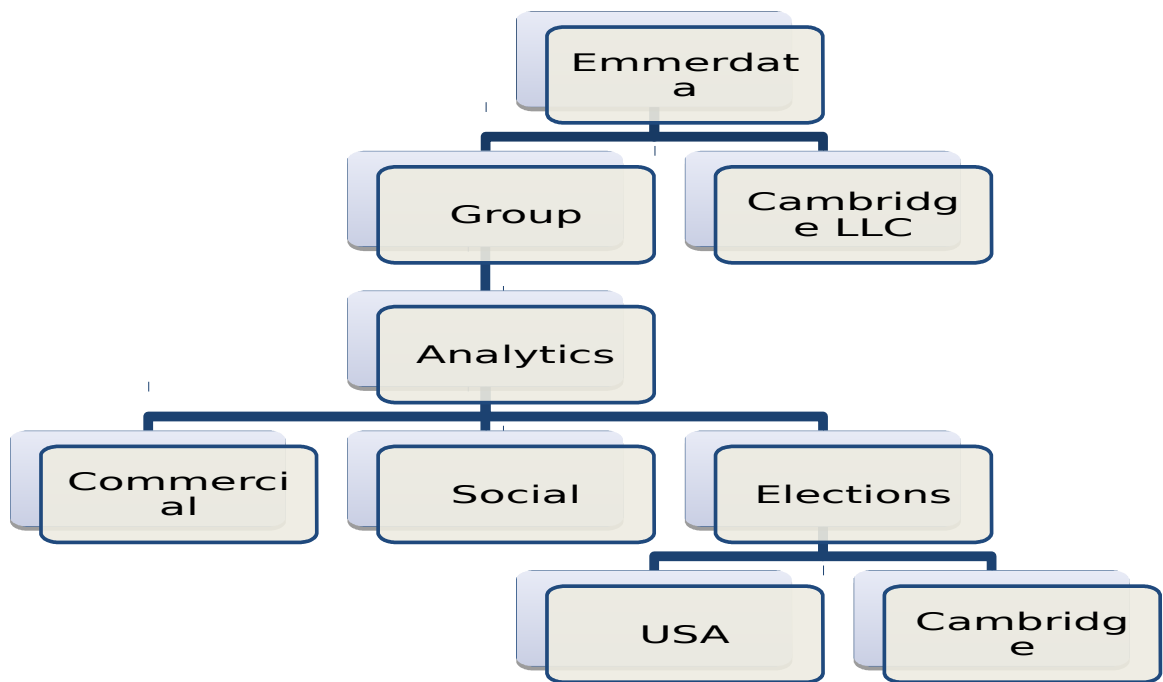
- *1<sup>st</sup> Witness Statement of Julian Wheatland*
- *Estimated Outcome statements*
- *Draft Minutes of order*

## **Introduction**

1. This skeleton is filed on behalf of the proposed administrators of each of the Applicant companies, Vincent John Green and Mark Newman of Crowe Clark Whitehill (the “**Proposed Administrators**”).
2. The Proposed Administrators confirm that they have been served with 8 linked applications for Administration Orders in relation to the following companies, pursuant to Paragraph 12(1)(b) or (c) of Schedule B1 to the Insolvency Act 1986 (the **Act**):
  - a. SCL Group Ltd (**Group**)
  - b. SCL Analytics Limited (**Analytics**)
  - c. SCL Commercial Limited (**Commercial**)
  - d. SCL Social Limited (**Social**)
  - e. SCL Elections Limited (**Elections**)
  - f. Cambridge Analytica(UK) Limited (**Cambridge**)
  - g. Cambridge Analytica LLC (A company registered in Delaware) (**Cambridge LLC**)
  - h. SCL USA Inc. (A company registered in Delaware) (**USA**)
3. In each case, the applicant is the board of directors of the company seeking an administration order to be made against their own company.

## **Group Structure**

4. The group structure of the 9 companies is as set out below.
5. The subsidiary companies are each wholly owned subsidiaries of their immediate parent.



### Winding up petitions

6. There are no pending winding up petition against any of the companies<sup>1</sup>.

### Consent by Administrators

7. Consents by the Proposed Administrators confirming their agreement to act and that, in their opinion, the purpose of the administration was likely to be achieved have been signed by the Proposed Administrators in respect of each company.
8. The Proposed Administrators' position remains unchanged.

### Insolvency

9. There are grounds for this Honourable Court to conclude that each of the Companies is cash-flow insolvent.
10. The test in Sch B1 para 11 is satisfied if the Company is likely to become unable to pay its debts; in this case each company cannot pay.

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<sup>1</sup> Whilst the companies could, of course, make valid “paper” administrations appointments, a court appointment where complex structures or overseas entities are involved is often preferable: vide for example, the paper appointment over a Guernsey limited partnership in *Kaupthing Capital Partners II Master LP Inc, sub nom Pillar Securitisation SARL v Spicer* [2010] EWHC 836 (Ch).

## Comparative benefits of an administration order to liquidation

11. The administrator has considered all of the purposes set out in Sch B1 para 3 in accordance with its hierarchy. The evidence shows that re-entry into administration is likely to achieve one or both of the purposes in para 3(1)(b) and (c) of Sch B1.
12. The administration order is sought to enable the completion of a more advantageous realisation of the Companies' business and assets than would be likely if the company were wound up.
13. On the figures, the difference in expected pence in the £ return to creditors in administration and liquidation is broadly neutral:

Company	Book Value £	Administration £	Liquidation £
<b>SCL Group Limited</b>			
Preferential	N/A	0%	0%
Unsecured	100%	0%	0%
<b>SCL Analytics Limited</b>			
Preferential	N/A	0%	0%
Unsecured	75%	0%	0%
<b>SCL Commercial Ltd</b>			
Preferential	N/A	100%	100%
Unsecured	100%	28%	27%
<b>SCL Social Ltd</b>			
Preferential	N/A	0%	0%
Unsecured	100%	0%	0%
<b>SCL Elections Ltd</b>			
Preferential	N/A	0%	0%

Unsecured	51%	0%	0%
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14. The above figures, however, do not take into account any recovery from the inter-company balances nor any potential sale of the business assets of the companies to include goodwill or intellectual property rights which could significantly enhance the extent of asset realisations.
15. The Proposed Administrators intend to immediately market the business assets of the group companies as a going concern either wholly or partly which could achieve realisations for the intangible assets of the company. Presently, the intangible assets within the outcome statements are mostly described as uncertain. The attraction of dealing with the administrations as a group is to avoid issues as to access to assets and data and over ownership of assets or control when those assets come to be realised. This is best illustrated by the position with USA and LLC where assets and the management function was controlled by Elections and there may well be a lack of clarity which asset or data this belongs to.
16. A realisation of debtor balances and work in progress are likely to achieve a better outcome in an administration rather than liquidation. This is because it affords an opportunity to complete and therefore realise work in progress. Presently these have no book value shown.

## **Cambridge LLC and USA**

17. 2 of the 9 group companies are not UK registered but are registered in Delaware.
18. The jurisdiction of the English court extends over both companies which are registered in England and companies which are incorporated and/or registered outside the United Kingdom<sup>2</sup>.
19. Under the EU Regulation, jurisdiction over a company in the courts of any EU Regulation State depends on whether the company has its Centre of Main Interests (“COMI”) or an “establishment” within that Member State. The English court will therefore exercise main insolvency jurisdiction over any company which has its COMI in the United Kingdom and secondary insolvency jurisdiction over any company which has its COMI in another Member State where that company also has an establishment in the United Kingdom.
20. Where there are foreign proceedings in respect of the company which come within the scope of the UNCITRAL Model Law a foreign representative – that is to say an office

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<sup>2</sup> A company incorporated outside the United Kingdom comes within the definition of an unregistered company: IA 1986, s 220

holder<sup>3</sup> may apply for recognition of those proceedings in the English court; if the application is properly made, the English court is bound to recognise the foreign proceedings. The proceedings must be recognised as foreign main proceedings if they are taking place in the State where the company has its COMI, or as a foreign non-main proceeding if the company has an establishment in that State<sup>4</sup>.

21. However, where a company has its COMI in a State which is not an EU Regulation State, the English court will generally assume an insolvency jurisdiction over that company<sup>5</sup> where it is established that<sup>6</sup>:
  - a. there is a sufficient connection with England and Wales which may, but does not necessarily have to, consist of assets within the jurisdiction;
  - b. there is a reasonable possibility, if a winding-up order is made, of benefit to those applying for the winding-up order; or
  - c. one or more persons interested in the distribution of the assets of the company are persons over whom the court can exercise jurisdiction.
22. The most usual way of showing a connection with England will be the presence of assets in England. Any assets will suffice<sup>7</sup>, including a right of action which had a reasonable prospect of success. The use of an English adviser to conduct business with individuals based in England may give rise to a sufficient connection for these purposes<sup>8</sup>.
23. In the present case however, the Proposed Administrators take the view that it can be shown that USA and Cambridge LLC have their COMI in the England.
24. The test for establishing COMI under the EU regulation was authoritatively stated by the ECJ in *Re Eurofood IFSC Ltd*<sup>9</sup> and explained by the Court of Appeal in *Re Stanford International Bank Ltd*<sup>10</sup>. It is common ground in this case that the following principles fall to be applied:
  - a. There is a presumption that the body's COMI is in the state where its registered office is located.
  - b. The presumption can be rebutted only by factors which are both objective and ascertainable by third parties.
  - c. Thus the court is to have regard to factors already in the public domain, or which would be apparent to a typical third party doing business with the body, excluding such matters as might only be ascertained on inquiry.
  - d. Accordingly, the place where the body's head office functions are carried out is only relevant if so ascertainable by third parties.
  - e. Each body or individual has its own COMI, there is no COMI constituted by an aggregation of bodies or individuals.
25. The starting point is therefore that Cambridge Inc and USA have registered offices located in New York. Next, one goes on to determine whether the presumption is rebutted by objective and ascertainable factors as explained in *Stanford*.
26. Both Cambridge LLC and USA's head office functions were in fact conducted in the

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3 Cross-Border Regulations, Sch 1, Art 2(j).

4 Cross-Border Regulations, Sch 1, Art 17

5 IA 1986, s221

6 *Stocznia Gdanska SA v Latreefers Inc (No 2)* [2001] 2 BCLC 116 at 130

7 *Re Compania Merabello San Nicholas SA* [1973] Ch 75.

8 *Re Mid East Trading Ltd* [1997] 3 All ER 481, [1997] 2 BCLC 230

9 *Re Eurofood IFSC Ltd* [2007] 2 BCLC 151

10 *Re Stanford International Bank Ltd* [2010] EWCA Civ 137

UK; this would have been apparent to third parties doing business with Cambridge Inc and USA that this was the case.

27. In the case of USA:

- a. It is 100% owned and financed by Elections, an English company
- b. Its sole customer is Elections
- c. Its overall strategic management exercised by Elections in London
- d. Its product development was provided by Elections in London
- e. Its accounts were managed by Elections in the UK
- f. Its HR policy and governance provided by Elections in the UK
- g. It did have staff members and a bank accounts in USA

28. In the case of Cambridge LLC:

- a. Its sole supplier is Elections, an English company
- b. Its assets were located in London office of Elections, including laptops, research, data and data models and intellectual property.
- c. Its operational management exercised from London by Elections (including accounts, invoicing, intellectual property, data models, brand management and overall strategic management)
- d. It has a representative office in the UK provided by Elections
- e. Its Managing Member was Emmerdata Limited, an English company

29. If appointed, the Proposed Administrators' intention is to apply to the United States Bankruptcy Court for the Southern District of New York for UNCITRAL recognition of these proceedings by filing petitions for recognition under chapter 15 of title 11 of the United States Code.

### **Revision to draft order sought by the Proposed Administrators**

30. The Proposed Administrators would seek following rubric added to any administration order made

*“That any act required or authorised under any enactment to be done by an administrator may be done by either or both of the Joint Administrators”*

31. This proposed additional provision is for the Proposed Administrators convenience; it allows the Proposed Administrators to divide their functions which allows the administration to be conducted more efficiently and assists in saving costs. It is not



anticipated that this insertion will be controversial and the formula sought is “standard form”.

## **Conclusion**

32. In all the circumstances, it is respectfully submitted that this is an appropriate case for an administration order in each of the Companies.

MARK WATSON-GANDY